

SETTING OCCUPATIONAL SAFETY AND HEALTH STANDARDS

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor through the Occupational Safety and Health Administration (OSHA) "to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce" through public rulemaking.

OSHA safety standards are designed to reduce on-the-job injuries; health standards to limit workers' risk of developing occupational disease. Most OSHA standards are horizontal - they cover hazards which exist in a wide variety of industries. These are compiled as the OSHA General Industry Standards. Vertical standards apply solely to one industry. OSHA has promulgated vertical standards for the construction, agriculture, and maritime sectors. Some general industry standards apply to construction, agriculture, and maritime as well.

Getting Started. The impetus to develop a new safety or health standard can come from a variety of sources: OSHA's own initiative; the U.S. Congress; information from the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH); Environmental Protection Agency's Toxic Substances Control Act (TOSCA) referral; public petitions; or requests from OSHA advisory committees.

Standard Setting Process. Standard setting may begin with publication in the Federal Register of a request for information (RFI), an advance notice of proposed rulemaking (ANPRM), or a notice of proposed rulemaking (NPRM). Through an RFI or an ANPRM, OSHA seeks information to determine the extent of a particular hazard(s), currently used and potential protective measures, and costs and benefits of various protective strategies.

OSHA has also sought to begin work on new standards by developing consensus through negotiated rulemaking. The agency forms an advisory committee representing the interest groups affected including industry and labor which meets to hammer out an agreement serving as the basis for a proposed rule. The process is intended to shorten the rulemaking timetable and discourage legal challenges to the final standard while at the same time providing for full public comment on the issue.

Information gathered in any of these ways and/or other available information such as injury and fatality data is used to develop a proposal. Sometimes OSHA circulates early drafts of proposals for informal comment from affected interest groups. Formal proposals are published in the Federal Register with a public comment period usually over the next 60 to 90 days which occasionally may be extended at the request of interested parties.

Commentors may also request a public hearing on a proposal. Public hearings are presided over by a Department of Labor administrative law judge who certifies the record after all data are received, though decisions affecting the final standard are made by OSHA as the agent of the Secretary of Labor. Hearings are followed by post-hearing comment periods - usually 30 or more days.

OSHA uses all of this information to prepare and publish in the Federal Register a final standard or a determination that no standard is needed. Standards take effect in 90 days or less, although some

provisions such as requirements for detailed programs or engineering controls may be phased in over a longer period. OSHA final standards may be challenged in the appropriate U.S. Circuit Court of Appeals by adversely affected parties.

Special Requirements for Health Standards. Based on Supreme Court decisions and a Presidential Executive Order, OSHA follows a four-step process for developing occupational health standards. First, the agency must demonstrate that a particular hazard poses a significant risk to worker health. Second, the agency must show that an OSHA standard would eliminate or substantially reduce that risk. Then the agency selects the most protective exposure limit that is economically and technologically feasible. Finally, the agency looks for the most cost-effective ways for employers to meet the exposure limit.

Standards Priorities. The Department of Labor publishes in the Federal Register a semiannual agenda of the standards being actively worked on, including target dates. The agenda usually appears in April and October and covers regulatory activity anticipated for a one-year period.

Special Standards. During its first two years, OSHA was authorized by the act to promulgate national consensus standards and other federal standards as OSHA standards. Where standards differed, the Act required OSHA to choose the most protective. National consensus standards came from voluntary standards developed by such groups as the American National Standards Institute and the National Fire Protection Association. Many OSHA safety standards were adopted in this way. Safety and health standards were adopted from the Walsh-Healey Act standards.

OSHA also has the authority to promulgate emergency temporary standards when it determines that workers are exposed to "grave danger" from toxic substances or physical conditions and could be protected by an OSHA standard. During the six-month life of an emergency temporary standard, OSHA is charged with developing a permanent standard to protect employees. The emergency temporary standard remains in effect until superseded by a permanent standard.

State Standards. States are encouraged to establish and maintain their own job safety and health programs subject to Federal approval. State-plan states' standards must be "at least as effective" as the federal standards, with comparable state standards to be issued within six months after new OSHA standards are published in the Federal Register. States also can develop standards covering areas or issues not regulated by federal OSHA. These state standards, when applicable to products distributed or used in interstate commerce, must be "required by compelling local conditions" and not "unduly burden interstate commerce."

Variances. The Act also provides, through the "variance" procedure, an alternative to compliance with specific requirements of an OSHA standard. A permanent variance may be granted to an applicant (employer) who can demonstrate to OSHA's satisfaction that the proposed alternative (condition, method, practice, or the like) will provide an employee environment as safe and healthful as that which would be afforded by compliance with the standard. The Agency may also grant a temporary variance to an applicant who can demonstrate to OSHA that additional time will be needed to comply with a newly promulgated standard beyond the effective date.

Keeping Track of OSHA Standards. Notices of OSHA standard setting activities are published in the Federal Register. All OSHA standards are available in the 29 Code of Federal Regulation as well as on a compact disk with read only memory (CD-ROM) for paying subscribers. Standards

interpretations, directives, documents, the OSHA Field Operations Manual, chemical sampling information, the OSHA Technical Manual, Federal Register index, hazard information bulletins, congressional testimony, memoranda of understanding with other agencies, corporate-wide settlement agreements, library catalog, and other program information maintained on the OSHA Computerized Information System (OCIS) also are on the disk.

The subscription is \$88.00 for the service with three quarterly updates. A single disk is available for \$28.00. Visa or MasterCard number along with expiration date or a check made payable to Superintendent of Documents may be used to order the service (order number 729-013-00000-5).

The disk may be ordered from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402-9352; telephone 202-783-3238; fax 202-275-0019, or purchased from a local GPO Bookstore. See the government listing in the telephone directory for GPO's local address.

This is one of a series of fact sheets highlighting U.S. Department of Labor programs. It is intended as a general description only and does not carry the force of legal opinion.